Single Bench

(1) 26/12 (3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASUR

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

WRIT PETITION NO. 49/0 OF 2004

PETITIONER

C.P. BHARDWAJ S/O SHRI P.R.BHARDWAJ , AGED ABOUT 52 YEARS, (RANGE OFFICER ,SAKTI) R/o. TAH. SAKTI, DISTRICT JANJGIR - CHAMPA (C.G.).

P.R. No. 4872/04
Presented by Shri M. K. Singha
dated 15-12-04

VERSUS

RESPONDENTS

1) STATE OF CHHATISGARH THROUGH SECRETARY, FOREST DEPARTMENT , GOVERNMENT OF CHHATTISGARH, DKS BHAVAN, RAIPUR (C.G.)

15.12.04
Asstt. to A. G. Bilaspur

2) DIVISIONAL FOREST OFFICER ,JANJGIR-CHAMPA DIVISION ,GOVN.OF CHHATTISGARH C.G.

शपथ आयुक्त
20/12/04
जिला जांजगीर (छ.ग.)
जांजगीर तहसील क्षेत्र

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/ WRITS, ORDER/ORDERS, DIRECTION /DIRECTIONS, ETC.

The Petitioner most respectfully begs to submit as under;-

21. PARTICULARS OF THE PETITIONER :-

As shown in the Cause Title.

22. PARTICULARS OF THE RESPONDENTS:-

(48)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...WP 4510/04... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9.5.2005

Mr. M.K. Sinha, counsel for the petitioner.

Mr. Sudhir Agarwal, Panel Lawyer for the State.

Heard both the counsel.

By this writ petition under Article 226/227 of the Constitution of India the petitioner has questioned the transfer order dated 10.11.2004 (Annexure P-4) passed by respondent No.1 as also order dated 4.12.2004 (Annexure P-6) passed by respondent No.2 asking the petitioner to handover the charge in pursuance of the order dated 10.11.2004.

Brief facts leading to filing of this petition are that the petitioner was working as Deputy Forest Officer in Korba Division from where he was transferred to Janjgir-Champa Division on 28.6.2000 by respondent No.1. Thereafter, vide order dated 31.7.2004 (Annexure P-3) respondent No.2 transferred the petitioner from Akaltara Range to Baradwar Range and in compliance of the order of respondent No.2, the petitioner joined his duties at Baradwar on 6.9.2004. However, within a period two months the petitioner was again transferred from Akaltara Range to Raigarh Division vide impugned order dated 10.11.2004 (Annexure P-4). Therefore, the petitioner's main grievance in this writ petition is that he has been transferred twice within a span of four months and the said transfer has been made in violation of order dated 18.10.2004 (Annexure P-5) whereby the State Government issued the order that the transferred employees

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 4910/04 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

should join their dutes on the new place of posting by 23.10.2004 and thereafter, no transfer should be made except in exceptional cases. The other point raised by the petitioner is that the petitioner's wife is a patient of Harnia and she has been advised to undergo an operation, therefore, by this transfer medical treatement of his wife will be affected.

Reply has been filed on the behalf of the respondents-State in which it has been mentioned that earlier transfer orders passed in the year 2000 & 2004 were made after completion of three years tenure by the petitioner at the respective places and the transfer in question cannot be considered as mala fide and illegal, as the petitioner has already worked around about 3 years as Forest Officer in Janjgir-Champa Division, therefore, he has been transferred to Raigarh Division. It has been further mentioned in the return that it is for the concerned authority to see that where an employee is to be transferred and at what time he is to be transferred and transfer in question is not a malafide transfer as the same has ben made in administrative exigency. It has been further mentioned that the disease of petitioner's wife is not a serious disease which requires regular watch. Ultimately, it has been prayed that the petition of the petitioner be dismissed.

Learned counsel for the pettiioenr argued that vide order dated 31.7.2004 (Annexure P-3) the petitioner was transferred from Akaltara to Baradwar and in pursuance of that he had joined at Baradwar. However, within a short span of three months he

(56)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was again transferred from Janjgir-Champa Division to Raigarh Division vide impugned order dated 10.11.2004 (Annexure P-4).

It has been held by the Hon'ble Apex Court in the matter of **Union of India and others V. S.L. Abbas** reported in **AIR 1993 SC 2444** that the transfer is an exigency of service and judicial review by the High Court under Article 226 of the Constitution of India in the matter of a transfer of a Government employee is that the order of the transfer is an incident of service, and it is for the appropriate authority to decide that who should be transferred where. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interefere with it. Again in the matter of **Rajendra Roy V. Union of India and another** reported in **AIR 1993 SC 1236,** the Hon'ble Apex Court has held that:

> " It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interefere with the order of transfer. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antnecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions."

(51)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the matter of **State of U.P. and others V. Gobardhan Lal** reported in **2004 AIR SCW 2082**, the Hon'ble Apex Court held that:

> "It is not for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. An officer or a servant cannot deprive or deny the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments."

The Apex Court further held that:

> "The Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and

(S2)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

convincing reasons, no interference could ordinarily be made with an order of transfer."

In the matter of **Kendriya Vidyalaya Sangathan V. Damodar Prasad Pandey** and others reported in **2004 AIR SCW 5563** the Hon'ble Apex Court held that:

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clealy arbitrary or vitiated by mala fides or infraction of any prescribed norms of principles governing the transfer."

In the light of above, if we look into the facts of the present case, the petitioner has not been able to plead and establish any mala fide action on the part of respondents, and the only ground raised by the petitioner is that he has been transferred twice within a short span of period i.e. 3 months. In the first instance, that cannot be made a ground for challenging the transfer order unless and until it is shown that the petitioner is subjected to frequent transfers without any rhyme or reason. It is admitted position that the petitioner had served 3 years in Korba Division & 3 years in Janjgir-Champa Division. However, vide order dated 31.7.2004 (Annexure P-4) he was transferred within the Janjgir-Champa Division itself i.e. from Akaltara Range to Baradwar Range. Thereafter, vide impugned order dated 10.11.2004 the petitioner has been transferred from Janjgir-Champa Division to Raigarh Division and the distance between these two places is not

(53)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 4910/07 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

more than 45 Km, as has been disclosed during the course of argument that vide impugned order only the division of the petitioner has been changed, therefore, this matter does not fall in the category of frequent transfers.

As far as the question of transfer against the policy is concerned, it is true that vide order dated 18.10.2004 (Annexure P-5) the State Government banned the transfer, however, in Para 4 it was made clear that in exceptional cases the transfers can be made and in reply of the State also it has been mentined that the impugned transfer order was issued in the administrative exigency. Perusal of impugned transfer order shows that by impugned order not only the petitioner has been transferred but the Forest Divisons of several other officers have been changed. Earlier, the petitioner was working in Janjgri-Champa Division and vide impugned order he has been transferred to Raigarh Division.

The other ground raised by learned counsel for the petitioner is that the wife of the petitioner is suffering from Harnia and she is required to undergo an operation. But, it has not been pleaded in the petition that Baradwar is a place where some good hospitals are available so the presence of his wife is required there. The distance between the two places is so small and even otherwise at Baradwar no proper hospitals are available for the said operation, the petitioner in either case to take his wife for treatment to Raigarh, Bilaspur or Raipur where good medical facilities are

(54)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 9910/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

available. Therefore, this ground raised by the petitioner is not a genuine ground.

In the result, the petitioner has not been able to make out a case for interference by this Court in view of the settled position of law, as such the petition of the petitioner is liable to be dimissed and accordingly, it is dismissed at the admission stage itself.

Sd/-
L.C.BHADOO
Judge

Rashmi

12.5.05 24.5.05